

RESOLUTION #2015-003

**RESOLUTION OF THE BOARD OF ADJUSTMENT
OF THE BOROUGH OF HAWTHORNE
(the "BOARD")**

In the matter of:

300 Lincoln Avenue (the "Applicant")

300 Lincoln Avenue

Block 120, Lot 13

Block 121, Lot 13

Hawthorne, New Jersey (the "Property" or the "Premises" as to Block 120, Lot 13)

(the "Accessory Lot" as to Block 121, Lot 13)

WHEREAS, Applicant has submitted a certain application to the Board dated February 15, 2013 for Use Variance, Variance, Waiver and Preliminary and Final Site Plan approval (the "Application"); and

WHEREAS, Applicant first appeared before the Board on August 12, 2013 and appeared on several occasions thereafter; and

WHEREAS, Applicant made a significant change to the Application, changing it from an automated car wash to a hand car wash; and

WHEREAS, Applicant appeared before the Board on the newly proposed hand car wash operation on July 21, 2014; August 18, 2014; September 15, 2014; October 20, 2014; November 21, 2014 and December 15, 2014; and

WHEREAS, the Board concludes that the requisite legal public notice was provided by Applicant; and

WHEREAS, the Board further concludes that it has jurisdiction to consider the application; and

WHEREAS, in support of the Application Applicant submitted the following exhibits:

A-1 – Photo

A-2 – Photo

A-3 – Photo

A-4 – Lorco – Recycling Brochure

A-5 – L2 Group, LLC Report dated July 3, 2014

A-5a – L2 Group, LLC Report dated September 29, 2014

A-6 – Graphic enlarged from page 4 of L2 Report

A-7 – L2 Group, LLC Report dated November 12, 2014

A-8 – L2 Group, LLC Report dated December 5, 2014

A-9 – Planners Report dated October 21, 2014

A-10 – Photo Board prepared by Mia Petrou, P.P.

B-1 – Burgis Report dated August 13, 2014

B-2 – Boswell McClave Report dated July 18, 2014

ZBA-1 – Boswell McClave Report dated November 18, 2014 (prepared by Berge Tombalakian); and

WHEREAS, Applicant also submitted the following:

(a) Borough of Hawthorne, Application for Site Plan Review and Development Plan, dated February 15, 2013;

(b) Borough of Hawthorne Checklist for Required Submissions to the Planning Board or the Zoning Board of Adjustment, dated February 15, 2013;

(c) Site Plans (5 sheets) entitled, "Proposed Car Wash Conversion for 300 Lincoln Avenue, LLC, 300 Lincoln Avenue, Hawthorne, New Jersey", prepared by Evans Architect, dated November 26, 2012, last revised December 4, 2014. The Plans consist of the following sheets:

<u>Sheet No.</u>	<u>Description</u>
S-1	Site Plan
S-2	Grading & Utility Plan
S-3	Landscaping/Lighting Plan
S-4	Additional Parking
A-1	Floor Plan & Elevations

(d) Property Survey entitled, "Map of Property, 300 Lincoln Avenue, LLC, Located in Hawthorne, Passaic County, New Jersey", prepared by John Evans, P.L.S., dated May 9, 2012.

(e) Drainage Calculations prepared by Evans Architect, dated September 30, 2013.

(f) Traffic Study prepared by Louis J. Luglio, P.E., dated July 3, 2014 (which is also exhibit A-5); and

WHEREAS, Applicant has made application to the Board for permission to convert an existing, abandoned automotive sales and repair facility into a combined hand car wash, detailing and oil/fluids change service facility ("Wash/Lube Facility"); and

WHEREAS, Applicant also seeks to use the Accessory Lot, located at Block 121, Lot 3, on Mawhinney Avenue, exclusively as a parking lot for employees of the Wash/Lube Facility; and

WHEREAS, as a result of these requests, Applicant must obtain the following:

(a) Permitted Use: Section 540-103 of the Borough Code indicates that the proposed use is not permitted in the B-1 Zone.

(b) Sign Setback: Section 540-137A indicates that a sign must be setback at least 30 feet from the curb line. The Applicant proposes two monument signs setback approximately 10 and 12 feet respectively from the curb; and

WHEREAS, the following existing non-conformities exist and remain unchanged:

(a) Minimum Rear Yard Setback: Section 540-7 and the Schedule of Bulk and Coverage Controls of the Borough Code requires a minimum rear yard setback of 25 feet to be provided. The existing rear yard setback is 7.7 feet. This is an existing variance condition and is not proposed to be increased in degree.

(b) Maximum Building Height: Section 540-7 and the Schedule of Bulk and Coverage Controls of the Borough Code indicates a maximum building height permitted of 25 feet. The existing building is 32 feet in height. This is an existing variance condition and is not proposed to be increased in degree.

(c) Maximum Impervious Lot Coverage: Section 540-7 and the Schedule of Bulk and Coverage Controls of the Borough Code limits the maximum impervious lot coverage to 50%. It should be noted that the existing impervious lot coverage on site is approximately 91%. This is an existing condition not proposed to be increased in degree.

WHEREAS Applicant has requested the following waivers:

(a) Floodplain/Wetlands Delineation: Item a(9) of the Checklist requires the floodplain/wetlands to be delineated.

(b) 200 Foot Topographic Information: Item c(5) of the Checklist requires topographic information and survey of existing utilities within 200 feet to be provided.

(c) Location of Existing Structures Within 200 Feet: Item c(7) of the Checklist requires the location of existing and proposed structures within 200 feet be provided.

(d) Location of any Proposed Recreation Areas: Item c(11) of the Checklist requires the location and identification of any proposed recreation areas to be provided.

(e) Parking Space Size: Section 540-132 requires a total area of 200 square feet per parking space. The Applicant proposes parking spaces 9 feet by 19 feet (171 square feet).

NOW THEREFORE, after due consideration the Zoning Board of Adjustment of the Borough of Hawthorne makes the following findings of fact and conclusions, based upon the evidence presented at its public hearing and the findings enumerated herein:

A. FINDINGS

1. Applicant has applied for permission to convert the Premises from a used automobile sales and service facility with outdoor storage of vehicles into a Wash/Lube Facility.

2. The Premises is located in the Borough's B-1 District which prohibits both the existing and proposed uses. As such, the prior use of the Property as a used automobile sales/service/storage facility is a pre-existing non-conforming use.

3. As a result of Applicant's proposal, it seeks the following relief:

(a) Preliminary and Final Site Plan to convert an existing, abandoned automotive sales and repair facility into a combined hand car wash, detailing and oil fluids change service facility;

(b) Use Variance since the proposed use as a Wash/Lube Facility is not permitted and use of the Accessory Lot, exclusively as a parking lot for employees of the Wash/Lube facility;

(c) Sign Setback: Section 540-137A indicates that a sign must be setback at least 30 feet from the curb line. The Applicant proposes two monument signs setback approximately 10 and 12 feet respectively from the curb;

(d) Floodplain/Wetlands Delineation: Item a(9) of the Checklist requires the floodplain/wetlands to be delineated.

(e) 200 Foot Topographic Information: Item c(5) of the Checklist requires topographic information and survey of existing utilities within 200 feet to be provided.

(f) Location of Existing Structures Within 200 Feet: Item c(7) of the Checklist requires the location of existing and proposed structures within 200 feet be provided.

(g) Location of any Proposed Recreation Areas: Item c(11) of the Checklist requires the location and identification of any proposed recreation areas to be provided.

(h) Parking Space Size: Section 540-132 requires a total area of 200 square feet per parking space. The Applicant proposes parking spaces 9 feet by 19 feet (171 square feet).

4. The Premises is located on Lot 13, Block 120 and is bounded by Lincoln Avenue (a County Road), Mawhinney Avenue and Warburton Avenue. It contains a vacant building formerly used for used automobile sales and automobile repair and which included outside storage of vehicles.

5. There is an accessory lot, Block 121, Lot 13 which is located at the southeast corner of Mawhinney Avenue, at the intersection with Lincoln Avenue (the "Accessory Lot"). It has been, and is proposed to remain as a macadam parking area.

6. Applicant seeks to re-purpose the Property for use as a combined hand car wash/detailing and a "Quick Lube" type operation ("Wash/Lube Facility").

7. As proposed, vehicles would enter the Property from Warburton Avenue, then travel in a northerly direction. There will be separate travel lanes for car wash vehicles and oil change vehicles. The oil change vehicles are located in a proposed interior lane leading to an overhead service door. The car wash vehicles are located in a proposed outside lane, which

traverses north, then west, with entry into the car wash at the northwestern corner of the existing building.

8. In support of its Application, Applicant presented a series of witnesses. All witnesses were sworn. All professional witnesses were accepted as experts in their respective field. Each witness' testimony is summarized herein. The Board specifically finds and concludes that all such testimony, along with their plans, reports, letters and all exhibits, which are incorporated herein by reference, are credible and have been accepted by the Board as persuasive:

(a) Matthew Evans was sworn and accepted as an expert in the field of Architecture. He testified on two occasions (July 21, 2014 and December 15, 2014) in regard to the "Hand Car Wash" site plan prepared under his direction.

He discussed the exterior layout of the plan. It provides for two lane, one direction queuing. The drive through lanes are proposed to be accessed from Warburton, then direct vehicles in a counterclockwise direction. The interior access lane allows entry into the oil change bay which is located on the building elevation facing Lincoln Avenue. The car wash vehicles would continue around the building, entering the building at its northwest corner located on the Mawhinney Avenue elevation.

Those vehicles being serviced for fluid changes will enter through an overhead door on the Lincoln Avenue elevation and exit via an overhead door on the Mawhinney Avenue elevation. If such car is washed, it will enter the queue and then a separate overhead door for access to the car wash. If it is not washed, such car will exit, turning right only onto Mawhinney Avenue.

Mr. Evans generally described the interior layout, with a focus on the hand car wash component. There is no conveyor system, each car will be driven in and washed and

dried in separate staging areas. All blower equipment is inside, having a 30 horsepower capacity and built with sound attenuation. The projected noise levels emanating from the blower will be in compliance with New Jersey state standards.

Waivers are sought for the seven undersized parking spaces on the Property at 9 ft. x 19 ft. (the Accessory Lot is comprised of ten existing spaces which are already at 9 ft. x 19 ft.).

There will be an oil/water separator. Approximately 2,750 gallons of water are expected to be used daily. The witness opined there is sufficient water capacity.

The witness also discussed two proposed monument signs and variances associated with their setbacks. Each proposed monument structure is 4 ft. x 7 ft. (except that a "tower" element is approximately 4 ft. 8 in. tall). The required setback is 30 feet. Applicant proposes setbacks of approximately 10 feet (at the northeast corner) and 12 feet is proposed (at the southeast corner) of the Property. The witness testified there are no reasonable conforming locations for the proposed sign and there are no dangers from sight distance.

The witness also discussed the several waivers and stated that, since the vicinity in which the Property is located is fully developed, the required site plan data for which waiver is sought is unnecessary. The Board concurs with this conclusion.

The witness emphasized there is no change to the size or location of the building and that there is no expansion, no change in grades or coverage and no change in the building height. The witness, on behalf of the Applicant stipulated that it will be subject to a 6 month lighting "probation" period wherein the developed project may be reviewed by the Board Engineer. In the event the Board Engineer determines lighting levels must be altered, Applicant will agree to abide by the Board Engineer's recommendation.

(b) Jeffrey Perez was sworn. He is the Applicant's principal. He is an owner/operator with 10 years experience in the auto spa/car wash business (with existing businesses in Leonia and Paterson). He confirmed that all wash/lube activities will occur inside the building. Based on his projections, he believes the proposed site plan provides more than adequate on site capacity for all cars entering the premises.

The estimated time to wash a car is seven to ten minutes. A maximum of 17 employees is contemplated. Oil changes take ten to twelve minutes. Product deliveries are scheduled approximately once a month. Used product is also picked up every seven to ten days and hauled away.

Mr. Perez elaborated on the activities. He confirmed that business will be conducted from 8 A.M. to 6 P.M. Monday to Saturday and 8 A.M. to 5 P.M. Sunday. As to fluid changes, vehicles will enter a dedicated area, be serviced and then will exit at the northeast bay door. If the vehicle is then washed, it will be directed to the left and then enter the northwest bay door. If not washed, it will continue straight, then exit right on to Mawhinney Avenue. Employees will act to provide traffic control so as to prevent conflicts between vehicles exiting the oil bay and cars entering the car wash.

The witness further described the car wash operation. It is a hand wash. Vehicles will first be hosed down, manually cleaned, blown dry, then followed by hand dry and finish. Customers will pay at the cashier/reception area located inside the southeast corner of the building, then exit onto Warburton Avenue.

The witness also stipulated that all snow will be carted off site or melted on premises. Lastly, the witness also stipulated that, if the vehicle queue backs up to a point where vehicles cannot enter the premises, the Applicant, via its employees, will bar entry to the property until the queue has dissipated, using cones or other barriers.

(c) Louis Luglio was sworn and accepted as an expert in the field of traffic engineering. He performed several studies of existing and projected on site and off site traffic conditions. He described Lincoln Avenue as an “urban minor arterial roadway”. He performed traffic counts at several locations. The A.M. peak hour is from 7 A.M. to 8 A.M. and the P.M. peak hour is from 5 P.M. to 6 P.M. He also studied the Saturday peak hour. He noted that the projected trips created by the proposed Wash/Lube Facility will be relatively light during the weekday peak hours (the facility opens after the A.M. peak hour and is winding down daily operations during the P.M. peak hour). The Wash/Lube Facility peak hour is from 10 A.M. to 2 P.M., when off site traffic conditions are relatively light. Mr. Luglio studied the Applicant’s Leonia operation and determined it takes ten minutes from start to finish. Luglio also reviewed all expected traffic movements within the site. There is ample capacity, radii, sight distance and maneuverability on site. He noted that the only areas of conflict are where those vehicles exiting the lube section meet vehicles entering the wash section. This is a manageable operations issue. So long as there is an employee to “direct traffic”, this area will remain safe.

As to the size of parking stalls, he concluded they are of sufficient size and number (along with the Accessory Lot) and meet industry standards.

He also determined that the combined wash and lube use are in harmony with each other and will not create any substantial queuing resulting in off site queuing. He concurred that, if off site queuing occurs, it is appropriate to bar entry into the facility until there is sufficient on site capacity.

On questions from the Board and its professionals, Luglio confirmed there will be no auto detailing and no left turns onto Mawhinney Avenue.

It is noted that Mr. Luglio testified on a number of occasions. At the Board’s request, he studied several off site intersections (and their traffic conditions) and

submitted a series of amended reports. He also consulted with the Board's traffic consultant, Berge Tombalakian, and satisfactorily addressed Mr. Tombalakian's questions and concerns.

Lastly, a number of revisions, based on requests from the Board and its Professionals as shown on the current site plan last revised December 4, 2014 result in the satisfaction of the Board's concerns regarding safety and function.

In sum, Luglio presented data which was conservative and amply demonstrated that the proposed Wash/Lube Facility is safe and efficient and will not create any substantial traffic congestion off site. This conclusion is based on the changes to the plan as finally submitted (with the striping and traffic signage now included, the ability to exit left or right on Warburton Avenue and Applicant's stipulation that it will bar entry to the site if queuing backs up off site.)

(d) Mia Petrou was sworn and accepted as an expert in the field of professional planning. She described the property as a vacant, improved repair facility. The Property, by definition, has three front yards. The Property is in the B-1 Zone. The Borough of Glen Rock border is at the centerline of Lincoln Avenue. She described the vicinity as being comprised of residential uses and small scale business uses, including several automotive uses. She further testified that there are a number of existing non-conformities which will remain unchanged.

Petrou testified the use is consistent with the Property's historical automotive use and that it is particularly well suited for the proposed adaptive re-use.

She opined that the proposed Wash/Lube Facility represents an adaptive re-use of the Premises; that it is consistent with the neighborhood character; provides a local service need; and advances two of the Borough's Master Plan goals (goal numbers 6 and 8)

inclusive of improved aesthetics and the restoration of a vacant building in a prominent location. The proposal also meets three of the MLUL goals (g, i and m).

No substantial negative impacts result. The residential neighbors are appropriately screened from the operation and, so long as the Applicant abides by all conditions stipulated during the hearing, there are no significant traffic impacts which result. She noted that the proposal does not contribute to the A.M. peak hour and that operations are winding down during the P.M. peak hour.

The Board opened the hearing to the public. Several neighbors appeared and provided testimony and questions in connection with the application.

B. CONCLUSIONS

The primary consideration of this Board is the use variance request to allow the Wash/Lube Facility where it is prohibited in the B-1 Zone along with the associated site plan, variances, and waiver requests.

In considering the application, the Board adopts the testimony and reports of all of the witnesses set forth above and hereby reaches the conclusion that ample evidence has been presented to justify the grant of the d(1) variance and all other corollary relief. Per the applicable law, the Applicant must demonstrate, with an enhanced quality of proof, "special reasons", namely that the use is peculiarly fitted to the particular location for which the variance is sought.

Specifically, this Board determines that based on the evidence, there are ample special reasons as described above. The Property is best suited as proposed, and is harmonious with surrounding uses, especially since the Property has been used historically for automotive purposes.

As set forth above, the Negative Criteria have been proven also. While some members of the public had questions, no substantive objections were raised by them. The Board concludes

that this proposal will not result in any substantial negative impact on the neighboring properties and also there is no substantial detriment to the public good and also no substantial detriment to the zone plan, especially since Applicant has demonstrated that this application advances two goals of Hawthorne's Master Plan.

As borne out during the public hearing, the changes to off site traffic patterns are not substantial. Also, since all operations occur indoor and since there is adequate screening, there will be no substantial negative impacts to the nearby residential neighbors.

As to the monument sign setbacks, the Applicant demonstrated that there are no reasonable alternatives for locating these signs. As such, due to the existing conditions and proposed site configuration, a "C1" hardship exists. There are no perceived negative impacts to having these signs located as proposed.

THEREFORE, BE IT RESOLVED, that the Board determines the Applicant has met its burden of proof for the requested relief and hereby **APPROVES** such application subject to the following conditions:

C. CONDITIONS OF APPROVAL

1. These Conditions of Approval shall be binding upon the Applicant, the owner, and any successors and/or assigns of either.
2. The Applicant shall comply with all stipulations made during the hearing on this application.
3. The Applicant shall promptly pay any professional staff fees billed, in excess of the required application escrows.
4. The Applicant must obtain approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted

herein, as well as any construction that may be a part of said relief. The Applicant is solely responsible for determining which governmental and/or public agencies, if any, such approvals are required of. The Applicant is further required to submit a copy to the Board's secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Solicitor, Engineer and Planner.

5. Any improvement(s) to be constructed as a result of this approval shall be constructed and operated in full compliance with the Code of the borough of Hawthorne, the Revised Statutes of the State of New Jersey and any other applicable county and/or federal law.

6. Prior to construction, Applicant shall (if not already done):

A. Submit five copies of a complete survey of the property (except for streets) to be dedicated, which survey shall be performed and certified by a licensed surveyor;

B. Submit a topographic survey showing contour intervals of two feet at a scale no larger than one inch equaling 100 feet;

C. Submit five copies of complete (as-built) plans of any improvements on the dedicated property.

7. The Applicant shall certify that all taxes and assessments have been paid up to the present time.

8. The Applicant shall submit to the Board Engineer for his review a sufficient number of complete sets of plans which shall incorporate all of the revisions that have been made conditions of this approval.

9. The Applicant shall construct all drainage basins or alternate drainage facilities upon the Premises, including inflow and outflow structures according to a construction schedule reviewed with and approved by the Hawthorne Borough Engineer.

10. The Applicant shall correct and make safe any dangerous or unsafe condition caused by the Applicant or those acting for and/or on its behalf affecting public safety or general welfare if any such condition develops.

11. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Premises which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed.

12. The Applicant must maintain an escrow account with the Borough and pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Borough's land development ordinances, zone codes and any other applicable municipal codes, and the New Jersey Municipal Land Use Law. The Applicant's escrow account must be current prior to any permits being issued, or construction or other activity commencing on the approved project.

13. The Applicant must obtain all other construction or other municipal permits required with respect to the relief as granted herein.

14. Any improvement(s) to be constructed as a result of the Board approving this application shall be constructed and operated in full compliance with the Uniform Construction Code, Code of the Borough of Hawthorne, the Revised Statutes of the State of New Jersey and any other applicable county, state and/or federal law.

15. The Applicants/owners are hereby advised that this application and plan have not been reviewed for conformance with the Americans with Disabilities Act (ADA). It is the responsibility of the Applicants/owners to conform to said legislation.

16. Subject to Boswell McClave Engineering's approval.

17. Applicant will not have a detailing operation.

18. Applicant will provide the Borough with the right to require modifications and changes to the lighting for a period of up to 6 months after installation.

19. All landscaping will be irrigated.

20. Applicant will satisfactorily address any required NJDEP site cleanup requirements.

21. Off-site parking area to be deed restricted for parking use only and only as an accessory use to the Wash/Lube Facility. The form and substance of the deed restriction is subject to Board review and approval.

22. Applicant will provide a flag pole on-site.

23. There will be no outdoor storage of materials.

24. There will be no on-street parking or queuing of customer vehicles.

25. Applicant will submit to Title 39 Jurisdiction and shall send a letter to the Hawthorne Mayor and Council to that effect.

26. Applicant will have a refuse enclosure.

27. Applicant will cart away snow or melt on-site.

28. There will not be an automated car wash. This approval is expressly based on the hand wash operation presented during the hearings.

29. There will be no turn prohibition onto Warburton Avenue. Applicant must obtain Passaic County Planning Board Approval and such approval must be for all of the items shown on the site plan bearing a last revision date of December 4, 2014.

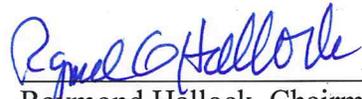
30. If queue on-site prohibits cars from entering the Property, Applicant will not allow vehicles to enter the Property, and will block entry to the Property, through the use of cones and/or obstacles until there is sufficient on site capacity for vehicles to enter. Applicant

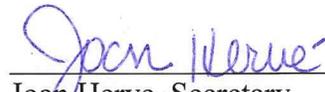
will have on-site personnel to control vehicles from Lincoln, and will also control traffic where lube service vehicles exit the overhead doors at the northeast corner of the building.

31. The Applicant will enter into a Developer's Agreement and post all requisite Bonds, Fees and Insurance.

BE IT FURTHER RESOLVED, that the Borough of Hawthorne is hereby directed to mail a copy of this Resolution to the Applicant and/or the Applicant's attorney and to file copies of this Resolution with the Borough Clerk, Borough Construction Official, Borough Tax Assessor and Borough Zoning Officer and to cause notice of these determinations of the Zoning Board to be published in the official newspaper of the Borough of Hawthorne within ten (10) days of the date hereof and thereafter published accordingly to law.

The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on February 9, 2015.


Raymond Hallock, Chairman


Joan Herve, Secretary

OFFERED BY: Gallagher
SECONDED BY: Melfi
VOTE: Ayes - 6
Nays - 0
abstain - 1